

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

PREAMBLE

1. Sections Affected

R2-8-115
R2-8-118

Rulemaking Action

Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 38-714(F)(5)

Implementing statutes: A.R.S. §§ 38-740, 38-762, 38-773, 38-922, Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 4848, December 3, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Nancy O. Johnson, Rules Coordinator

Address: State Retirement System
3300 N. Central, 14th Fl.
Phoenix, AZ 85012

Telephone: (602) 308-5172

Fax: (602) 264-6113

E-mail: nancyj@asrs.state.az.us

or

Name: Susanne Dobel, Manager, External Operations

Address: State Retirement System
3300 N. Central, 14th Fl.
Phoenix, AZ 85012

Telephone: (602) 240-2039

Fax: (602) 246-6113

E-mail: susanned@asrs.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

On November 7, 2000 the Governor's Regulatory Review Council (G.R.R.C.) approved the ASRS 5-Year-Review Report. Noting that R2-8-115 was last amended in 1979 and R2-8-118 was last amended in 1982, the report found that the current R2-8-115 conflicts with current statutes, the current R2-8-118 is no longer used or enforced, and both current rules are not clear, concise, or understandable. This rulemaking removes outdated information and citations, clarifies language, and conforms the rules to current rulemaking standards. This rulemaking identifies the application of interest from inception of the ASRS through the present. Finally, this rulemaking changes the interest rate paid on

Notices of Proposed Rulemaking

plan members returned contributions from 8% to 4% beginning July 1, 2005, as determined by the Board at its regular monthly meeting on August 20, 2004.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues.

The ASRS will bear moderate to substantial costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process.

The cost in reduced contribution returns by individuals who withdraw their contributions from the ASRS varies depending on the amount on contributions they have in the fund, and how long they wait to withdraw the funds. As an example, if an individual quit working for an ASRS employer on June 30, 2005, with \$100,000 in the member's account, and 10 years later withdrew the funds, the individual would receive \$148,024, at 4% interest. If the interest rate had stayed at 8% the individual would have received \$215,892.

The reduction in the interest rate on returned contributions produces a reduction in the contribution rate for 2006 and 2007 fiscal years of 20 basis points each year for employee members and 20 basis points each year for employer members, for a total reduction in the contribution rate of 40 basis points for each year.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Nancy O. Johnson, Rules Coordinator

Address: State Retirement System
3300 N. Central, 14th Fl.
Phoenix, AZ 85012

Telephone: (602) 308-5172

Fax: (602) 264-6113

E-mail: nancyj@asrs.state.az.us

or

Name: Susanne Dobel, Manager, External Operations

Address: State Retirement System
3300 N. Central, 14th Fl.
Phoenix, AZ 85012

Telephone: (602) 240-2039

Fax: (602) 246-6113

E-mail: susanned@asrs.state.az.us

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The ASRS has scheduled an oral proceeding on the proposed rulemaking:

Date: Thursday, January 20, 2005

Location: 3300 N. Central, Board Room, 10th Floor
Phoenix, AZ 85012

Time: 10:30 a.m.

The close of record is 5 p.m., Thursday, January 20, 2005.

A person may also submit written comments on the proposed rules no later than 5 p.m., Thursday, January 20, 2005, to the individuals listed in questions #4 and #9.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

rules:

Not applicable

12. Incorporation by reference and their location in the rules:

Not applicable

13. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

- R2-8-115. ~~Termination of~~ Return of contributions upon termination of membership by separation from service by other than retirement or death; payment of survivor benefits upon the death of a member
- R2-8-118. ~~Allocation to funds~~ Application of interest rates

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

- R2-8-115. ~~Termination of~~ Return of contributions upon termination of membership by separation from service by other than retirement or death; payment of survivor benefits upon the death of a member**

A. The following definitions apply to this Section unless otherwise specified:

1. "ASRS" means the same as in A.R.S. § 38-711.
2. "ASRS employer" has the same meaning as "employer" in A.R.S. § 38-711.
3. "Authorized representative" means an individual specified by the employer to provide the ASRS with information about a member who previously worked for the employer.
4. "Beneficiary" means the individual or individuals specified by the member to receive the balance of the member's account or, if applicable, selected benefits upon the death of the member.
5. "Contribution" means:
 - a. Amounts required by Title 38, Chapter 5, Article 2 to be paid to ASRS by a member or by an employer on behalf of a member other than amounts attributed to long-term disability insurance.
 - b. Any voluntary amounts paid by a System member to ASRS to be placed in the System member's account, and
 - c. Any amount credited to a non-retired System member's employer account or to a retired System member's non-guaranteed benefit as determined by Section 24(B) of Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1.
6. "Court" means a superior, appellate or the Supreme court of this state, a corresponding court of another state of the United States, or a federal court of the United States.
7. "Designated beneficiary" has the same meaning as in A.R.S. § 38-762(H).
8. "Direct rollover" has the same meaning as in A.R.S. § 38-770.
9. "Domestic relations order" means a written decision relating to the dissolution of a marriage issued by a court.
10. "Fiscal year" means July 1 of one year to June 30 of the next year.
11. "Lump-sum payment" means the total amount in a member's ASRS account to which the member is entitled by law.
12. "Member" has the same meaning as in A.R.S. § 38-711.
13. "Personal representative" means a person who is authorized by law to represent the estate of a deceased individual.
14. "Separate from service" means to terminate employment with an ASRS employer during the service year.
15. "Service year" has the same meaning as in A.R.S. § 38-711.
16. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and which is administered by the ASRS.
17. "Terminate employment" means:
 - a. To end the employment relationship between the member and the ASRS employer with the intent that the member not return, and
 - b. There is an interval of not less than 21 calendar days between the last day of employment in any position subject to participation in the Arizona State Retirement System and the first day of employment or of reemployment in the same or in any other position subject to the participation in the Arizona State Retirement System.
18. "Trustee" means an individual who holds monetary assets within an eligible retirement plan or IRA for the benefit of the member.
19. "United States" means the same as in A.R.S. § 1-215.
20. "Warrant" means a voucher authorizing payment of funds due to the member.

Notices of Proposed Rulemaking

AB. ~~Payment of refund:~~ A member who ~~terminates service~~ separates from service by other than retirement or death and ~~desires~~ requests a ~~refund~~ return of his the member's contributions, including amounts received for the purchase of service, any employer's contributions authorized under A.R.S. § 38-740, and ~~together with interest thereon~~ interest on the contributions, shall ~~submit a withdrawal request on a~~ complete an Application for Return or Transfer of Contributions form ~~supplied by the Board~~ that includes the following information:

1. The member's full name;
2. The member's social security number;
3. The member's current mailing address;
4. The member's daytime telephone number;
5. The member's birth date;
6. Whether the member wants a lump-sum payment or direct rollover
7. Dated and notarized signature of the member certifying that the member:
 - a. Is no longer employed by an ASRS employer, and the last date of employment;
 - b. Understands that if a payroll transaction occurred in the last six months the member's former ASRS employer must complete Section 4 of the application, providing the following:
 - i. The last day the member worked;
 - ii. Final pay period ending date with final contribution adjustment or correction;
 - iii. Amount of final contribution or payroll adjustment that does not include long-term disability funds;
 - iv. Printed name, title, and signature of the authorized representative;
 - v. The authorized representative's phone number;
 - vi. The authorized representative's fax number, if applicable;
 - vii. The name of the ASRS employer; and
 - viii. The date Section 4 was filled out;
 - c. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application;
 - d. Has read and understands the statements of information in the instructions the member received with the application;
 - e. Understands that the member is forfeiting all future retirement rights and privileges of membership with the ASRS;
 - f. Understands that long-term disability benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
 - g. Has provided the member's correct social security number on the form; and
 - h. Is or is not a resident of the United States;
8. If a payroll transaction for the member has occurred with an ASRS employer within the last six months, the member shall obtain following information from the ASRS employer:
 - a. The date the member separated from service with the ASRS employer;
 - b. The final pay period ending date and final contribution adjustment or correction, if any;
 - c. The final contribution amount or payroll adjustment, not including long-term disability funds;
 - d. The printed name, title, and signature of the ASRS employer's authorized representative;
 - e. The date of the authorized representative's signature;
 - f. The authorized representative's business telephone and fax numbers; and
 - g. The name of the ASRS employer; and
9. If the member requests a direct rollover, the member shall:
 - a. Specify either that:
 - i. The entire amount of the distribution be transferred to an employer eligible plan or individual retirement account, or
 - ii. A specific dollar amount of the distribution be transferred to an employer eligible plan or individual retirement account;
 - b. Provide the individual retirement account number, if applicable;
 - c. Provide the name and mailing address of the individual retirement account trustee or the name of the Employer Eligible Plan; and
 - d. Obtain from the Employer Eligible Plan, if applicable, the authorized representative's:
 - i. Signature, date, and title,
 - ii. Business telephone number; and
 - iii. E-mail address, if applicable.

BC. ~~Interest credits on refunds:~~ If ~~membership is cancelled~~ the member requests a return of contributions and a ~~refund~~ warrant is ~~issued~~ distributed during the fiscal year that membership in ASRS was established, no interest ~~shall be~~ is paid to the account of ~~such withdrawing~~ the member. If ~~termination of membership occurs~~ the member requests a return of contributions after the first fiscal year, ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(B) to

Notices of Proposed Rulemaking

the account of the member interest at the annual rate shall be credited to the account of the withdrawing or deceased member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. Interest for an incomplete year on the previous June 30 balance shall be allowed in accordance with R2-8-118(A)(1) is calculated at the rate of 1/12th of the annual rate for each elapsed month following the previous June 30.

CD. Marital status: Upon filing submitting a request for a refund return of contributions, a withdrawing member shall be entitled to payment of the amount due him, with interest, to the member as specified in subsection (A) without regard to his previous or current marital status unless there has been filed with a present or former spouse submits a domestic relations order that specifies entitlement to all or part of the return of contributions to the Board ASRS prior to such request for payment the payment of the return of contributions a notice of the claim of entitlement to all or a portion of the amount by a present or former spouse. A claim of entitlement domestic relations order by a present or former spouse will be is recognized by the Board ASRS only in accordance with the legally adjudicated rights of the contesting claimants and in accordance with A.R.S. § 38-773. Certified copies of court decrees or judgments shall be filed in support of the claim of a former spouse of a withdrawing member.

DE. Refund of contributions of deceased member: Upon death of a member, the designated beneficiary shall furnish a certified copy of the death certificate to the Board, whereupon ASRS shall refund shall be made in accordance with provide death benefits based on the deceased member's last dated written designation of beneficiary on file with the ASRS. If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the refund shall be survivor benefit is paid to the deceased member's estate representative designated by a court order as specified in A.R.S. § 38-762(F). Such representative The designated beneficiary or other person specified in A.R.S. § 38-762(F) shall furnish:

1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;
2. Provide a certified copy of the court order of appointment, if applicable; and
3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
 - a. The deceased member's full name,
 - b. The deceased member's social security number,
 - c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(F):
 - i. Full Name,
 - ii. Mailing address,
 - iii. Contact telephone number,
 - iv. Date of birth, if applicable; and
 - v. Social security number or Tax ID number, if applicable.

E. Refund of contributions where no death certificate is available:

1. Upon such circumstances which lead to the presumed death of a member or upon such conditions and circumstances where a death certificate is unavailable, but that the death of a member is presumed to have occurred; then the designated beneficiary of the member shall make application for the refund of contributions for said member. If there is no designation of beneficiary, the application shall be made by an estate representative designated by a court order. Such representative shall furnish a certified copy of the court order of appointment.
2. The Board shall, upon receipt of such application, request such secondary evidence or court order or testimony as shall satisfy the Board concerning the death of the aforesaid member.
3. The Board may hold a hearing and hear all of the evidence or the Board may require the beneficiary or the representative to institute an estate proceedings in the Superior Court to establish the presumed death of the member and to have a representative appointed by a court order to act in behalf of the estate of said member. The Board may determine or may deduce that death is probable.
4. Upon the decision of the Board that death of the aforesaid member is and was probable under the circumstances, the Board shall require a covenant of indemnity from the designated beneficiary or the representative of the said member which shall indemnify the Arizona State Retirement System for any loss of funds due to payment or expenses involved in the event the aforesaid member is later found not to have been deceased at the time and under the circumstances presented before the Board.
5. After compliance with all of the above conditions, refund shall be made in accordance with the deceased member's last dated written designation of beneficiary. If there is no designation of beneficiary, the refund shall be paid to the deceased member's estate representative designated by a court order. Such representative shall furnish a certified copy of a death certificate and a certified copy of the court order of appointment.

F. Limitation on eligibility for payment of refund: For the purpose of A.R.S. §§ 38-758 and 38-781.12 a member or participant is not considered to have terminated employment or to have left employment unless there is an interval of not less than 21 calendar days between the last day of employment in any position subject to participation in the Arizona State Retirement System and the first day of employment or of reemployment in the same or in any other position subject to the participation in the Arizona State Retirement System.

R2-8-118. Allocation to funds Application of interest rates

Notices of Proposed Rulemaking

A. The following definitions apply to this Section unless otherwise specified:

1. "Member" has the same meaning as in A.R.S. § 38-711.
2. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.
3. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and which is administered by the ASRS.

B. Retirement Fund earnings Application of interest from inception of the ASRS through the present is specified as follows:

1. Effective Date of Interest Rate Change	2. Assumed Actuarial Interest and Investment Yield Rate	3. Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death		4. Interest Rate Used to Determine Survivor Benefits
7-1-1953	2.50%	2.50%		2.50%
7-1-1959	3.00%	3.00%		3.00%
7-1-1966	3.75%	3.75%		3.75%
7-1-1969	4.25%	4.25%		4.25%
7-1-1971	4.75%	4.75%		4.75%
7-1-1975	5.50%	5.50%		5.50%
7-1-1976	6.00%	5.50%		6.00%
7-1-1981	7.00%	5.50%		7.00%
7-1-1982	7.00%	7.00%		7.00%
7-1-1984	8.00%	8.00%		8.00%
7-1-2005	8.00%	4.00% for Plan Members	8.00% for System Members	8.00%

1. Interest:

- a. ~~The June 30, 1959, and preceding actuarial valuations of the Retirement Fund were based on a 2 1/2 percent annual rate of interest; the June 30, 1960, through June 30, 1965, actuarial valuations were based on a 3 percent annual rate of interest; the June 30, 1966, through June 30, 1968, actuarial valuations were based on a 3 3/4 percent annual rate of interest; the June 30, 1969, through June 30, 1970, actuarial valuations were based on a 4 1/4 percent annual rate of interest; the June 30, 1971, through June 30, 1974, actuarial valuations were based on a 4 3/4 percent annual rate of interest; the June 30, 1975, actuarial valuation was based on a 5 1/2 percent annual rate of interest; the June 30, 1976, through June 30, 1980, actuarial valuations were based on a 6 percent annual rate of interest; the June 30, 1981, actuarial valuation shall be based on a 7 percent annual rate of interest and subsequent valuations shall be at the 7 percent annual rate of interest until such rate is changed by the Board.~~

- b **C.** Interest at the annual rate of 5 1/2 percent shall be effective July 1, 1975. The annual rate in effect at At the beginning of each fiscal year ~~shall be interest~~ is credited to the retirement account of each member on the June 30 which marks the end of the fiscal year ~~based on the basis of the balances~~ balance in the member's account as of the previous June 30. The ~~balances upon balance on~~ balance on which such interest shall be ~~is~~ is credited ~~shall include~~ includes:

1. ~~both employer~~ Employer and employee contributions;
2. ~~voluntary~~ Voluntary additional contributions made by ~~employees~~ system members, if applicable;
3. ~~any amounts~~ Amounts credited as ~~employer contributions~~ by ~~transfers~~ transfer pursuant to A.R.S. § 38-753(E) ~~38-922~~;
4. Amounts credited to a non-retired system member's employer account or to a retired system member's non-guaranteed benefit as determined by Section 24(B) of Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1; and
5. ~~interest previously~~ Interest credited in previous years. ~~If a member terminates service and withdraws his contributions, interest earnings for the fiscal year in which the refund occurs will be calculated for the incomplete year on the previous June 30 balance, if any, at the rate of 1/12th of the annual rate for each elapsed month following such June 30.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION RISK MANAGEMENT SECTION

PREAMBLE

- 1. Sections Affected**

R2-10-101 R2-10-106 R2-10-108	<u>Rulemaking Action</u> Amend Amend Amend
-------------------------------------	------------------------------------------------------------
- 2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and implementing statute (specific):**

Authorizing statute: A.R.S. § 41-621
Implementing statute: A.R.S. § 41-621
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 421, February 6, 2004
Notice of Rulemaking Docket Opening: 10 A.A.R. 2889, July 16, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking**

Name:	John Kindree, Administrative Manager
Address:	Department of Administration Risk Management Section 100 N. 15th Ave., 3rd Floor, Suite 301 Phoenix, AZ 85007
Telephone:	(602) 542-1492
Fax:	(602) 542-1473
- 5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

The purpose of this rulemaking is to address the issues identified in the previous five-year review report approved by the Governor's Regulatory Review Council. The subject matter of R2-10-106 establishes the valuation basis for personal and real property coverage and the procedure for determining the method of repair or replacement of covered property and lists the types of property that are excluded from coverage provided by the state's self insurance. The subject matter of R2-10-108 establishes the conditions under which a deductible of up to \$10,000 may be assessed to an agency and what actions the agency may take to have its deductible waived.
- 6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not utilize a study for evaluating or justifying the rulemaking.
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**
 - A. Identification of Rule**

Title 2, Chapter 10, Article 1, "Coverage and Claims Procedure"
 - B. Background and Summary**

The proposed rule amendments for R2-10-101 add new definitions and update existing definitions of terms used in all sections of Risk Management rules. There is not any direct economic impact from these changes. If there is an impact as a result of changes to definitions for a particular section, the impact will be outlined in the explanation of that section.

The proposed rule amendment for R2-10-106 will impact a state agency's coverage for personal property claims valued at less than \$1,000. Currently, claims less than \$100 are not covered. The current level of coverage has been in place since June, 1989. The higher threshold for personal property coverage is designed to increase awareness and promote loss prevention actions taken by state agencies. The rule amendment for personal property coverage does not

Notices of Proposed Rulemaking

become effective until July 1, 2006. This will allow adequate time for agencies to prepare action plans to reduce these losses.

The proposed rule amendment for R2-10-108 removes the deductible of 20% (not to exceed \$10,000) for any workers' compensation claim not reported to Risk Management within 10 days of first report to a supervisor or other agency representative. The same deductible is also removed for agencies that do not report at least 75% of industrial injury or illnesses within 2 days of first report to a supervisor or agency representative. Risk Management continues to encourage agencies to report industrial injuries and illnesses on a timely basis, but removes any financial penalty to an agency. Risk Management has removed the deductible of up to \$10,000 on each claim identified as having the most significant opportunity for loss prevention actions. The Loss Prevention Unit will continue to work with agencies to identify exposures and assist with loss prevention plans targeting these exposures, but removes any financial penalty to an agency.

C. Entities Directly Impacted

All state agencies could be impacted by these changes. Small business and consumers are not impacted by these rules.

D. Potential Costs and Benefits

Agencies will bear a greater initial cost for personal property claims valued at less than \$1,000. Risk Management anticipates that this change will strengthen agency loss prevention activities and could eventually result in a lower cost allocation to agencies for Risk Management services.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John Kindree, Administrative Manager
Address: Department of Administration
Risk Management Section
100 N. 15th Ave., 3rd Floor, Suite 301
Phoenix, AZ 85007
Telephone: (602) 542-1492
Fax: (602) 542-1473

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: January 19, 2005
Time: 9:00 a.m.
Location: Industrial Commission Auditorium
800 W. Washington St.
Phoenix, AZ 85007
Nature: Oral proceeding to receive public comment.
Closure: The public record will close on January 21, 2004 at 4:30 p.m.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Any matters incorporated by reference and location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT SECTION

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

Section

R2-10-101. Definitions
R2-10-106. State-owned Property Coverage and Limitations
R2-10-108. Deductibles and Waivers

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

R2-10-101. Definitions

The following definitions apply in this Chapter unless the context otherwise requires:

1. "Agency" means a state department, board, or commission.
2. "Agency loss prevention committee" means a panel of individuals established by the head of an agency to develop and oversee the agency's loss prevention program.
3. "Agency loss prevention coordinator" means an individual chosen by the head of an agency to implement the agency's loss prevention program and who is the agency's liaison with Risk Management.
4. "Attorney General's Office" means the Liability Management Section of the Attorney General's Office assigned to defend claims covered by A.R.S. § 41-621.
5. "Client" means an individual in custodial care of a provider through contract or court order with a state agency through programs listed in A.R.S. § 41-621(B).
6. "Confined space" has the meaning in 29 CFR 1910.146(b) Which has been incorporated by reference by The Industrial Commission in R20-5-602.
7. "Contaminant" means a substance that is radioactive, infectious, carcinogenic, toxic, ~~irritant, irritant,~~ corrosive, ~~sensitizer, sensitizing~~ or an agent that damages the lungs, skin, eyes, mucous membranes and other body organs.
8. "Deductible" means the amount of a loss that the agency will pay before Risk Management is obligated to pay anything.
9. "Department" means the Department of Administration, an agency of the state of Arizona.
10. ~~"Emergency"~~ "Environmental emergency" means an immediate threat to human health or the environment, threat or both.
11. "Environment" means ~~navigable waters, surface waters, groundwater, drinking water supply, land waters of the state as described in A.R.S. § 49-201(40),~~ land surface or subsurface strata, and ambient air, within or bordering on this state.
12. "Environmental ~~Contractor~~ contractor" means a company hired by the state to conduct environmental site investigations and remediation work.
13. "Environmental property claim" means a demand or payment ~~that resulting result from chemical or biological damage to the environment hazardous waste contamination.~~
14. "Ergonomics" means a science of the relationship between human capability and the work environment, which the Department uses to design a job, task, equipment, or tool to conform comfortably within the limits of human capability.
15. "Feasibility study" means a remediation plan to clean up a contaminated site based upon a site investigation ~~to clean up a contaminated site and prepared by an environmental contractor.~~
16. "Geophysical survey" means a radar, magnetic, electric, gravity, thermal, or seismic survey.
17. "Groundwater" means water beneath the ground in sediments or permeable bedrock.
18. ~~"Hazardous substance or waste" means hazardous waste as defined in~~ has the meaning in A.R.S. § 49-921(5).
19. "Health threat" means evidence that exposure to a specific type and concentration of a contaminant is harmful to human health. (This ~~evidence~~ evidence ~~shall be based on~~ means at least 1 study conducted by the National Institute of Occupational Safety and Health or the Environmental Protection Agency in accordance with established scientific principles.)
20. "Incident" means an event involving an agency employee, facility, or equipment that results in ~~an~~ a motor vehicle accident, occupational injury or illness, personal injury, or loss of or damage to state property, or an event involving the public that exposes the state to a liability loss.
21. "Loss prevention" means any action or plan intended to reduce the frequency and severity of property, liability, or workers' compensation losses.
22. "Operator" means any person authorized to operate a vehicle on state business.
- ~~22-23.~~ "Passenger van" means any motor vehicle designed, modified, or otherwise capable of being configured to carry not less than from 8 to 15 passengers. and no more than 15 passengers.
- ~~23-24.~~ "Personal protective equipment" means any clothing, material, device, or equipment worn to protect a person from exposure to, or contact with, any harmful material or force.
- ~~23-25.~~ "Post closure monitoring and maintenance" means those activities that are conducted after closure notification and that are necessary to:
 - a. Keep the facility in compliance with aquifer water quality standards at the applicable point of compliance;
 - b. Verify that the closure design has eliminated discharge to the extent intended;
 - c. Perform any remedial or mitigative action necessary to comply with this Chapter and other release laws; and;
 - d. Meet property use restrictions.
- ~~24-26.~~ "Provider" means an individual or entity licensed to provide services to state clients as outlined in A.R.S. § 41-621(B) that is not contractually required to indemnify and hold the state harmless.

Notices of Proposed Rulemaking

- ~~25-27.~~ "Remedial action" or "remediation" means the process of cleaning up a hazardous substance or waste site by an environmental contractor. has the meaning in A.R.S. § 44-287(12)
- ~~26-28.~~ "Risk Manager" means the Administrator for the State Risk Management Program.
- ~~27-29.~~ "Risk Management" or "RM" means the State Risk Management Program.
- ~~28-30.~~ "Self-insurance" means state provided loss protection for an agency or employee funded through RM's revolving fund.
- ~~29-31.~~ "Site assessment" means the process of ~~completing and~~ assessing a site ~~investigation and a feasibility study~~. for the presence of hazardous waste.
- ~~30-32.~~ "Site investigation" means a detailed ~~examination~~ investigation by an environmental contractor of an area ~~of a building or ground suspected of being contaminated with~~ to verify the presence, extent, and concentration of a hazardous substance or waste.
33. "Specialty vehicle" means any vehicle that has unique operating or handling characteristics including, but not limited to ATV's, Aircraft, Watercraft, Trams, Fork Lifts, Golf Carts, etc.
34. "Volunteer worker" means a person doing unpaid state of Arizona work or activities under the direction and control of an authorized state official.

R2-10-106. State-owned Property Coverage and Limitations

- A. The Department provides property loss coverage for state-owned buildings on a replacement-cost basis for items actually replaced or repaired. Property loss coverage for state-owned personal property is replacement cost less depreciation. Effective July 1, 2006, Personal personal property claims less than \$100 \$1000 are not covered.
- B. RM shall not include the cost of labor in property loss reimbursement if state employee labor cost for repair or replacement is allocated from appropriated funds. RM shall determine whether to use state employees or contractors for repair work based upon availability.
- C. Property loss coverage includes all state-owned property except: roads, bridges, tunnels, dams, dikes, and retaining walls.

R2-10-108. Deductibles and Waivers

- A. Liability ~~judgments and claim~~ claims settlements.
1. The Department shall charge each agency a deductible of \$10,000 on each ~~liability claim approved for payment court judgment of \$150,000 \$100,000 or more, and on each claim approved for settlement by the joint legislative budget committee under JLBC rule 14, State Liability Claims, April 25, 1997, which is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~
 2. RM shall waive the deductible if the agency provides a response to RM ~~containing that contains~~ a plan of action ~~as follows to be taken to eliminate or limit~~ for eliminating or limiting any similar future risk of liability to the state, ~~and:~~
 - a. ~~The agency shall submit the plan of action is submitted as supportive detail to the agency's official JLBC rule 14 response, or is provided to RM within 60 days of the judgment or settlement date; \$100,000 or more claim payment. The plan of action shall include the following:~~
 - i. Investigative report findings that explain the cause or causes of the claim;
 - ii. Actions that will be implemented to prevent recurrence of similar losses or claims;
 - iii. A timeline for completion of action items in the plan; and
 - iv. Development of measurement criteria to ensure actions taken are adequate and successful;
 - b. ~~RM approves may approve or deny the plan of action as reasonable and effective based on whether the action items are reasonable and will be effective in preventing similar losses; and~~
 - c. ~~The agency implements shall implement the plan within 30 days of RM approval, and the agency provides provide~~ brief monthly status reports on the ~~essential elements~~ action items of the plan's implementation.
 3. If the agency fails to comply with ~~all the conditions outlined in subsection (A)(2), RM shall charge a deductible of \$10,000 on the subject judgment or claim as well as each and any subsequent claim resulting that results from that the relevant~~ cause or exposure until the agency fully complies with subsection (A)(2).
- B. ~~Workers' compensation claims.~~
1. ~~Beginning January 1, 1999, RM shall charge each agency a deductible on each workers' compensation claim the agency fails to report to RM within 10 days after an employee notifies the employee's supervisor or other agency representative of an injury. The deductible amount of the claim shall be equal to 20% of the total claim, not to exceed \$10,000.~~
 2. ~~RM shall waive the deductible on all of the agency's workers' compensation claims reported after the 10-day period, except those identified in subsection (C) if the agency meets the following criteria:~~
 - a. ~~In calendar year 1998, the agency reports 50% of all occurrences of industrial injury or illness within 2 days of being reported by an employee to the employee's supervisor or other agency representative. To make this computation RM shall use a rolling 12-month average and apply the deductible to claims filed during the individual months of 1999.~~

Notices of Proposed Rulemaking

- b. In calendar year 1999, the agency reports 66% of all occurrences of industrial injury or illness within 2 days of being reported by an employee to the employee's supervisor or other agency representative. To make this computation RM shall use a rolling 12-month average, and apply the deductible to claims filed during the individual months of 2000.
 - e. In calendar year 2000, and all years forward, the agency reports 75% of all occurrences of industrial injury or illness within 2 days of being reported by an employee to the employee's supervisor, or other agency representative. To make this computation RM shall use a rolling 12-month average, and apply the deductible to claims filed during the individual months of 2001 and all years forward.
- ~~C.~~ **Loss prevention opportunities.**
- 1. RM shall charge each agency a deductible of not more than \$10,000 on each claim resulting from the exposure that RM and the agency identify and agree has the most significant opportunity for reduction through loss prevention actions (significant exposure). Each year the agency and RM shall identify and agree upon the most significant exposure to be selected under this plan.
 - 2. RM shall waive all deductibles against an agency, except those stated in subsections (A) and (B) under the following conditions:
 - a. The agency prepares a plan approved by its agency head to address the significant exposure with specific loss prevention actions;
 - b. The agency submits the plan to RM for review by October 31 for the current fiscal year;
 - c. RM approves the plan as reasonable and effective;
 - d. The agency implements the plan; and
 - e. The agency submits a brief report to RM on a quarterly basis describing the progress on the implementation of the plan.
 - 3. If the agency fails to meet all of the conditions in subsection (C)(2), RM shall charge a deductible of not more than \$10,000 on each claim resulting from the significant exposure until the agency meets all conditions in subsection (C)(2).
- ~~D.B.~~ If a dispute arises between RM and the agency ~~pertaining to~~ regarding this Section, RM shall attempt to resolve the dispute by holding one or more meetings ~~shall be held at~~ proceeding progressively upward, ~~incremental~~ through each Department of Administration management levels until the agency and RM reach a solution. ~~level.~~
- ~~E.C.~~ RM may waive any agency's deductible ~~to any agency~~ for just cause. Just cause exists ~~when~~ if the application of a deductible is not warranted due to the circumstances of the claim, or is not in the best interest of the state.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT SECTION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| R2-10-207 | Amend |
| <u>2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u> | |
| Authorizing statutes: A.R.S. § 41-621 | |
| Implementing statutes: A.R.S. § 41-621 | |
| <u>3. A list of all previous notices appearing in the Register addressing the proposed rules:</u> | |
| Notice of Rulemaking Docket Opening: 10 A.A.R. 207, July 16, 2004 | |
| <u>4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u> | |
| Name: | John Kindree, Administrative Manager |
| Address: | Arizona Department of Administration
Risk Management Section
100 N. 15th Ave., 3rd Floor, Suite 301
Phoenix, AZ 85007 |
| Telephone: | (602) 542-1492 |
| Fax: | (602) 542-1473 |

Notices of Proposed Rulemaking

5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

The purpose of this rulemaking is to address the issues identified in the previous five-year review report approved by the Governor's Regulatory Review Council. The subject matter of R2-10-207 establishes the basis for the development of effective loss prevention programs at each state agency. The rule requires each agency to include certain specific elements and to develop procedures for investigating and reporting accidents, maintaining records and preparing emergency plans for reasonably foreseeable perils.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not utilize a study for evaluating or justifying the rulemaking.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The impact to state agencies is minimal. The added requirement that employees operating vehicles in the course and scope of state business attend a certified defensive driving training session every two years requires one-half day of additional training bi-annually. This training is provided by Risk Management at no cost to an agency. There is no impact to small business or consumers.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John Kindree, Administrative Manager

Address: Arizona Department of Administration
Risk Management Section
100 N. 15th Ave., 3rd Floor, Suite 301
Phoenix, AZ 85007

Telephone: (602) 542-1492

Fax: (602) 542-1473

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: January 19, 2005

Time: 9:00 a.m.

Location: Industrial Commission Auditorium
800 W. Washington St.
Phoenix, AZ 85007

Nature: Oral proceeding to receive public comment.

Closure: The public record will close on January 21, 2004 at 4:30 p.m.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Any material incorporated by reference and its location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

**CHAPTER 10. DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT SECTION**

ARTICLE 2. LOSS PREVENTION

Section

R2-10-207. Agency Loss Prevention Program Elements

ARTICLE 2. LOSS PREVENTION

R2-10-207. Agency Loss Prevention Program Elements

Each agency and all other entities as required by law or determined in the best interest of the state, under A.R.S. § 41-621 including county court operations as directed by the Supreme Court, and as applicable to their operations ~~loss prevention committee~~ shall develop, implement, and monitor the following loss prevention program elements of an occupational health and safety program, ~~(as applicable to their agency):~~

1. The agency loss prevention policy statement;
2. New employee and continuous in-service training programs that include:
 - a. Safety and loss prevention education regarding property protection, liability exposure, and workplace safety;
 - b. Agency-specific safety training regarding emergency plans, actions, and first-aid; and
 - c. Job-specific safety training to employees performing tasks where:
 - i. Frequent or severe accidents have occurred; or
 - ii. There is a potential for frequent or severe accidents.
3. Documentation and recordkeeping of employee training;
4. An emergency plan for each agency location that establishes procedures to follow in the event of serious injury, fire, or other emergency that can be reasonably foreseen at the specific agency location. The emergency plan shall:
 - a. Designate an employee responsible for formulating, implementing, testing, and maintaining the emergency plan;
 - b. Contain procedures for notification of emergency response personnel and safe evacuation of personnel from the location, including an evacuation diagram that shall be visibly posted throughout each location;
 - c. Contain procedures for obtaining first-aid, medical treatment, and emergency transportation in the event of serious injury; and
 - d. Require that the plan be periodically tested and evaluated and identified deficiencies corrected;
5. Procedures for scheduled safety inspections of buildings, grounds, equipment, and machinery. An agency shall document the results of each inspection and forward notice of any deficiencies to the loss prevention coordinator for corrective action. The agency loss prevention committee or coordinator shall follow-up on inspection recommendations to ensure action is taken to remedy a noted deficiency. The agency loss prevention committee or coordinator shall bring an uncorrected deficiency to the attention of the agency head;
6. Procedures for accident and incident investigations:
 - a. An agency shall develop procedures for reporting an accident or incident involving personnel, property, automobile, liability, industrial injury, environmental damage, and a mishap or near miss to the agency's loss prevention coordinator or loss prevention committee. The loss prevention coordinator and loss prevention committee shall review the accident and incident reports and identify the corrective action necessary to prevent recurrence;
 - b. Procedures for reporting, investigating, and recording maintenance of a work-related accident or incident shall include:
 - i. Timely and accurate reporting of each work-related accident or incident;
 - ii. Investigation of each accident or incident to gather pertinent information, determine cause, and recommend a solution to prevent recurrence of a similar accident or incident;
 - iii. Compiling, analyzing, and evaluating all data derived from the investigation to determine the frequency, severity, and location of an accident or incident and communicating the information to appropriate agency personnel; and
 - iv. Maintaining records of employee injury under ~~A.A.C. R20-5-631 through R20-5-636~~, A.A.C. R20-5-629.
7. A maintenance program for state-owned vehicles, equipment, and grounds under the control of that agency that includes:
 - a. A preventive maintenance program with a written schedule of routine inspection, adjustment, cleaning, lubrication, and testing of equipment including boilers and machinery, fire protection, security and emergency equipment, and motor vehicles;
 - b. Safety procedures such as "lock-out-tagout" and "buddy procedures" for jobs subject to a serious accident such as those involving working in a confined space, operating dangerous equipment and machinery, and working on electrical equipment; and
 - c. Personal protective equipment for a specific job or area including training on proper fit, use, care, maintenance, inspection, cleaning, and storage;
8. A fire protection program that meets the standards described in the Arizona State Fire Code at A.A.C. R4-36-201
9. Systems and procedures to protect the personal security of each employee and prevent loss of or damage to state property, including:
 - a. Security escorts, exterior lighting, identification badges, and electronic access systems;
 - b. Labeling systems, inventory control procedures, property removal procedures, and key control systems; and
 - c. Building and ground security systems, ~~alarms~~ alarm systems, electronic surveillance, perimeter fencing, and security patrol services.

Notices of Proposed Rulemaking

10. A land, facility, equipment, or process environmental protection program that includes:
 - a. Procedures to ensure compliance with all applicable local, state, and federal environmental laws;
 - b. Identification of equipment, processes, and practices that may cause water pollution, air pollution, or land and property contamination;
 - c. Procedures to prevent or control emissions and ~~discharges in excess of~~ that exceeds limits in local, state, and federal laws and rules; and
 - d. Procedures to investigate, report, and remediate any discharge or contamination ~~in excess of~~ that exceeds limits in local, state, or federal laws and rules;
11. An industrial hygiene program that encompasses an existing or potential health hazard within an agency, or that agency personnel may be exposed to during the course of work. The program shall include a documented survey of agency facilities and work practices to identify areas of concern such as noise, air contamination, ergonomic factors, lighting, and confined spaces. The program shall include procedures to notify employees of health hazards, medical monitoring when applicable, and personal protective equipment requirements including training, fit testing, and care. The industrial hygiene program shall include the following program elements as applicable:
 - a. Hazard communication;
 - b. Laboratory safety (Chemical Hygiene Plan);
 - c. Hearing conservation;
 - d. Confined space entry;
 - e. Handling and disposing of hazardous waste;
 - f. Back protection;
 - g. Ergonomics;
 - h. Asbestos management;
 - i. Building air quality;
 - j. Chemical exposure assessment;
 - k. Personal protective equipment;
 - l. Respiratory protection;
 - m. Bloodborne pathogen protection; and
 - n. Tuberculosis protection;
12. A motor fleet safety program that ~~includes~~ include the following elements:
 - a. ~~Standards~~ Agency specific standards to ensure that ~~an employee each operators is who drives on state business is~~ capable of operating a vehicle in a safe manner. ~~Operators~~ An operator shall possess a valid and ~~appropriate~~ applicable class driver's license ~~and is currently licensed to operate a motor vehicle in Arizona;~~ An employee authorized to operate a personally-owned vehicle on state business shall have the statutorily-required liability insurance;
 - b. ~~Instruction in safe vehicle operation and defensive driving techniques;~~ A recognized defensive driving course; ~~An agency shall ensure that each operator, who in performance of assigned duties drives a vehicle, attend a national or state recognized defensive driving course prior to operating a vehicle and at least every two years after initial operation.~~
 - c. Specialized operating and safety training. Agencies shall provide operators of specialty vehicles with specialized operating and safety training specific to the type of vehicle before initial operation and every two years at a minimum;
 - ~~e-d.~~ Mandatory use of seat belts;
 - ~~d-e.~~ A log of the maintenance on each state vehicle;
 - f. Pre-trip inspection forms. An operator shall maintain in the state vehicle a completed pre-trip inspection form for the current day or trip; ~~Review of the driving record of any agency employee who is authorized to drive state vehicles or other vehicles on state business. Each employee operating a state or other vehicle on state business shall upon request, provide the agency loss prevention coordinator, personnel representative, supervisor, fleet manager, or RM with the employee's name, date of birth, driver's license number, and expiration date, and;~~
 - g. Procedures, standards and review. Review of any vehicular accident incidents by the agency loss prevention committee or by an incident review committee appointed by the an agency head, to review vehicular accidents and recommend corrective action to prevent recurrence; The incident review committee shall determine the cause and preventability of the incident and shall forward findings to the agency head for further action as deemed appropriate;
 - g- A training program for any driver of a passenger van designed for occupancy of 8 to 15 people. The program shall include classroom instruction, behind the wheel instruction (on the road or on a closed course), and a certificate of completion to be filed with the agency's fleet management.
 - h. Operator record reviews. An agency shall perform an annual or more frequent operator record review of an operator's current 39 months driving history. The agency shall develop specific agency standards control identified

Notices of Proposed Rulemaking

adverse driving patterns:

- i. An agency shall implement operator review criteria that will meet or exceed the following:

	<u>ACCEPTABLE</u>	<u>CONDITIONAL</u>	<u>UNACCEPTABLE</u>
<u>Motor Vehicle Records</u>	<u>One moving violation in the last 39 months or.</u>	<u>Two moving violations in the last 39 months or.</u>	<u>Three or more moving violations in the last 39 months or.</u>
<u>Incident Review Committee</u>	<u>One preventable incident in the last 39 months.</u>	<u>Two preventable incidents in the last 39 months.</u> ----- <u>One moving violation plus 1 preventable incident in the last 39 months.</u>	<u>Three or more preventable incidents in the last 39 months.</u> ----- <u>Any combination of moving violations and preventable incidents totaling three or in the last 39 months more.</u>

Agency Action

<u>ACCEPTABLE</u>	<u>Annual MVR license and insurance status check.</u> <u>Check ride at supervisor's discretion.</u>
<u>CONDITIONAL</u>	<u>Semi-annual MVR checks and check ride w/supervisor;</u> <u>Minimum attend Defensive Driving Course.</u>
<u>UNACCEPTABLE</u>	<u>Driving privileges suspended.</u>

Job description modification II.

- j. The operation of a motor vehicle is a requirement of state employment, an agency shall include it in the specific job description.
 - k. MVR checks. An operator shall upon request, provide the operator's name, date of birth, driver's license number, and driver's license expiration date for purpose of an MVR check.
 - l. Passenger vehicle training if 15 to 18 occupants. A training program designed for any driver of a passenger/cargo van or sport utility vehicle designed to accommodate eight to 15 people. An agency shall provide initial training that consists of classroom instruction and behind wheel training on the road or closed course The agency shall ensure that each operator completes training every two years and refresher behind wheel every four years. The operator shall maintain training records.
 - m. Suspension and revocation reporting and implementation. An operator shall immediately report in writing any suspension or revocation of the license to agency. Any MVD suspension or revocation of the license results in the immediate suspension of all driving and operating privileges granted for the purpose of conducting state business.
 - n. Moving violation reporting. An operators shall immediately report in writing to operator's direct supervisor any moving violation that occurs in a state or personal vehicle used to conduct state business.
 - o. Non-compliance with any part of this rule shall result in application of a deductible in accordance with A.R.S. § 41-621(E).
13. A safety and security standard for a construction site where state employees work, that includes;
- a. Site-specific safety rules and procedures for the type of risks expected to be encountered on the site;
 - b. Routine inspection of construction sites to ensure compliance with local, state, and federal safety laws and rules;
 - c. Training of each employee in safe practices and procedures;
 - d. Availability of first-aid, medical, and emergency equipment and services at the construction site, including arrangements for emergency transportation;
 - e. Procedures to prevent theft, vandalism, and other losses at the construction site; and
 - f. Periodic testing and evaluation of the plan and correction of identified deficiencies.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected

R18-2-101
R18-2-201
R18-2-202
R18-2-203
R18-2-210
Appendix 2

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 49-104(A)(1) and(A)(11), 49-425

Implementing statutes: A.R.S. §§ 49-404 and 49-405

3. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 5099, December 17, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kevin Force

Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007

Telephone: (602) 771-4480 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)

Fax: (602) 771-2366

5. An explanation of the rules, including the agency's reasons for initiating the rules:

Summary. The Arizona Department of Environmental Quality is proposing rules to update its ambient air quality standards for PM 2.5 and 8-hour averaged ozone to reflect the current national standards. The rulemaking will also add a definition for PM 2.5, update test methods and protocols in Appendix 2, update area designations in R18-2-210 to include the Phoenix Metropolitan 8-hour Ozone Nonattainment Area, and make a technical correction to R18-2-202.

Background. In 1997, EPA promulgated final rules implementing new National Ambient Air Quality Standards (NAAQS) for particulate matter (PM) (62 FR 38652, July 18, 1997) and ozone (62 FR 38894, July 18, 1997). The new primary ozone NAAQS set forth an 8-hour averaged standard at a level of 0.08 ppm. This new primary standard is expected to provide increased protection to the public, particularly at-risk populations such as children, against a wide range of ozone-induced health effects, such as decreased lung function, increased respiratory symptoms, and hospital and emergency room admissions. The secondary 8-hour averaged ozone standard is identical to the primary standard, and is expected to provide increased protection to the public welfare against ozone-induced effects on vegetation, such as agricultural crops, forests and other ecosystems. ADEQ is proposing to amend R18-2-203 to include the new 8-hour averaged NAAQS for ozone.

The new primary and secondary ambient air quality standards for particulate matter are for fine particulate matter, or particulate matter with an aerodynamic diameter of less than or equal to 2.5 microns (PM_{2.5}). The new federal primary standard for PM_{2.5} is 15 µg per cubic meter of PM_{2.5}, annual arithmetic mean concentration, and 65 µg per cubic meter of PM_{2.5}, 24-hour average concentration. The new primary standard is expected to provide increased protection against a wide range of PM-related health effects, including premature mortality and increased hospital admissions and emergency room visits, increased respiratory symptoms and disease, and decreased lung function, especially in the at-risk populations such as the elderly, individuals with cardiopulmonary disease, children and persons with asthma. The new secondary standard for PM_{2.5} is identical to the primary standard, and is expected to provide protection against PM-related public welfare effects including soiling, material damage, and visibility impairment. In conjunction with the new PM_{2.5} standards, reference methods based on 40 CFR part 50, Appendix L, and designated in accordance with 40 CFR Part 53, have been specified for monitoring PM as PM_{2.5}, and reference methods in 40 CFR part 50, Appendices J and K, have been amended. The proposed R18-2-201 will adopt the new

PM_{2.5} NAAQS, while Appendix 2 will be amended to include the new and revised test methods. This proposed rulemaking will also amend R18-2-101 to include a definition for PM_{2.5}.

In 1996, EPA restated the primary and secondary NAAQS for sulfur oxides, in the form of sulfur dioxide, in terms of parts per million (ppm), rather than micrograms (61 FR 25556, May 22, 1996). This rulemaking proposes amending the Arizona sulfur dioxide standards, at R18-2-202, to conform to EPA terms.

This proposed rulemaking will also update R18-2-210, incorporation by reference of 41 CFR 81.303, to July, 2004, to include the Phoenix Metropolitan Nonattainment Area for 8-hour ozone.

The National Ambient Air Quality Standards contained in Article 2 are cited extensively in Chapter 18 of the Arizona Administrative Code, particularly in: Article 3, Permits and Permit Revisions; Article 4, Permit Modifications for New Major Sources and Major Modifications To Existing Sources and; Article 7, Existing Stationary Source Performance Standards. This rulemaking will reduce confusion about the correct standards and ensure that correct standards are applied throughout Arizona.

Section by Section Explanation of the Proposed Rules:

R18-2-101. Definitions. The proposed rule will add a definition for “PM_{2.5},” drawn from 40 CFR Part 50.7.

R18-2-201. Particulate Matter; PM₁₀ and PM_{2.5}. The proposed rule will add subsections (A)(3)(a) and (A)(3)(b), which determines reference methods used to measure PM₁₀. Subsection (B) will also be added, which contains the primary and secondary ambient air quality standards for PM_{2.5}, as well as the reference methods used to measure PM_{2.5} and determine attainment of the standards.

R18-2-202. Sulfur oxides (sulfur dioxide). This Section amends the standards for sulfur dioxide to conform to EPA terms, which have been changed from micrograms (µg) to parts per million (ppm).

R18-2-203. Ozone; 1-hour standard and 8-hour averaged standard. This Section amends the standards for ozone, adding an 8-hour averaged standard of 0.08 ppm. Additionally, this Section provides an ending date for the application of the 1-hour standard – June 15, 2005. This date accords with EPA’s planned revocation of the 1-hour standard, to be set forth in Phase II of the implementation strategy for the 8-hour standard, to be promulgated later this year.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

See: Criteria documents for Final Rule at 62 FR 38652 (Air Quality Criteria for Particulate Matter (“Criteria Document”) (three volumes, EPA/600/P-95-001aF through EPA/600/P-95-001cF, April 1996, NTIS #PB-96-168224,) and (Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (“Staff Paper”) (EPA-452/R-96-013, July 1996, NTIS #PB-97-115406).

See: Criteria documents for Final Rule at 62 FR 38856 (Air Quality Criteria for O₃] and Other Photochemical Oxidants (“Criteria Document”) (three volumes, EPA/600/P-93-004aF through EPA/600/P-93-004cF, July 1996, NTIS #PB-96-185574,) and (The Review of the National Ambient Air Quality Standards for O₃]: Assessment of Scientific and Technical Information (“Staff Paper”) (EPA-452/R-96-007, June 1996, NTIS #PB-96-203435).

See also: American Trucking Associations, Inc., et al. v. United States Environmental Protection Agency, 336 U.S. App. D.C. 16, 175 F. 3d 1027, and 531 U.S. 457.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Rule Identification. This rulemaking includes amended Sections R18-2-101, R18-2-201 through R18-2-203, R18-2-210, and Appendix 2 to Article 2.

Costs. There are no additional costs to the regulated community when a state agency incorporates an already effective federal standard verbatim. The costs of compliance have already occurred, and were considered when the federal regulation was proposed and adopted. These rules impose no additional costs on the regulated community, small businesses, political subdivisions, or members of the public.

Cost to ADEQ associated with this rulemaking will be minimal, based on reducing confusion and assuring correct standards are applied. ADEQ does not intend to hire any additional employees to implement or enforce these rules.

Benefits. Benefits accrue to the regulated community when a state agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the state agency is closer to those being regulated and, therefore, is generally easier to contact and to work with to resolve differences, compared with the U.S. EPA, whose regional office for Arizona is in San Francisco. State implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences, including:

Notices of Proposed Rulemaking

1. Medical costs. These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss. This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and caregiving. These include special caregiving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and he or she may require caregiving.
4. Other social and economic costs. These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

Conclusion. In conclusion, the incremental costs associated with this rule are generally low, and apply solely to ADEQ, while the air quality benefits are generally high. In addition, there are benefits to industry from being regulated by a geographically nearer government entity. There are no adverse economic impacts on political subdivisions. There are no adverse economic impacts on private businesses, their revenues or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on state agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of enforcement. There will be no direct impact on state revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking. The rules are no less stringent and no more stringent than the federal regulations on each subject.

Rule impact reduction on small businesses. A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives (see below) for the rulemaking. The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

The statutory objectives which are the basis of the rulemaking. The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in number 2 of this preamble. The specific objectives are as follows:

1. Implement rules necessary for EPA delegation of Clean Air Act § 109 (NAAQS) program to Arizona.
2. Implement rules necessary for EPA requirements of Clean Air Act § 110 for implementation of the NAAQS in Arizona.

For all of these objectives, ADEQ is required to adopt the federal rules without reducing stringency. ADEQ, therefore, has found that it is not legal or feasible to adopt any of the five listed methods in ways that reduce the impact of these rules on small businesses. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: David Lillie
Address: ADEQ, Air Quality Planning Section
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-4461 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for a specific number.)
Fax: (602) 771-2366
E-mail: Lillie.David@ev.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Notices of Proposed Rulemaking

The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Date: February 2, 2005

Time: 1:30 p.m.

Location: Department of Environmental Quality
1110 W. Washington Ave., Rm. 250
Phoenix, AZ 85007

Nature: Oral proceeding with opportunity for formal comments on the record.

Close of comment: 5:00 p.m., February 11, 2005

11. Any other matter prescribed by statute that is applicable to the specific agency or to any other specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

41 CFR 81.303	R18-2-210
40 CFR 50;	Appendix 2
40 CFR 50, Appendices A through N;	Appendix 2
40 CFR Part 51, Appendix M, Appendix S, Section IV, and Appendix W;	Appendix 2
40 CFR 52, Appendices D and E;	Appendix 2
40 CFR 53;	Appendix 2
40 CFR 58;	Appendix 2
40 CFR 58, all appendices;	Appendix 2
40 CFR Part 60, all appendices;	Appendix 2
40 CFR Part 61, all appendices;	Appendix 2
40 CFR Part 63, all appendices;	Appendix 2

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

ARTICLE 1. GENERAL

Section

R18-2-101. Definitions

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section

R18-2-201. Particulate matter

R18-2-202. Sulfur oxides (sulfur dioxide)

R18-2-203. Ozone

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

Appendix 2. Test Methods and Protocols

ARTICLE 1. GENERAL

R18-2-101. Definitions

No change

1. No change

2. No change

a. No change

b. No change

c. No change

d. No change

e. No change

3. No change

Notices of Proposed Rulemaking

4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
11. No change
 - a. No change
 - b. No change
 - c. No change
12. No change
13. No change
14. No change
 - a. No change
 - b. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. No change
26. No change
27. No change
 - a. No change
 - b. No change
28. No change
29. No change
30. No change
31. No change
32. No change
33. No change
34. No change
35. No change
36. No change
37. No change
38. No change
39. No change
40. No change
41. No change
42. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change

- h. No change
- i. No change
- j. No change
- k. No change
- l. No change
- 43. No change
- 44. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 45. No change
- 46. No change
- 47. No change
- 48. No change
- 49. No change
- 50. No change
- 51. No change
- 52. No change
- 53. No change
- 54. No change
- 55. No change
- 56. No change
- 57. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
- 58. No change
- 59. No change
- 60. No change
- 61. No change
- 62. No change
- 63. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - (1) No change
 - (2) No change
 - vi. No change
 - vii. No change
 - viii. No change
 - (1) No change
 - (2) No change
 - ix. No change
 - (1) No change
 - (2) No change
 - x. No change

- xi. No change
- 64. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - (1) No change
 - (2) No change
 - vi. No change
 - vii. No change
 - viii. No change
 - (1) No change
 - (2) No change
 - ix. No change
 - (1) No change
 - (2) No change
 - x. No change
 - xi. No change
 - xii. No change
 - xiii. No change
 - xiv. No change
 - xv. No change
 - xvi. No change
 - xvii. No change
 - xviii. No change
 - xix. No change
 - xx. No change
 - xxi. No change
 - xxii. No change
 - xxiii. No change
 - xxiv. No change
 - xxv. No change
 - xxvi. No change
 - xxvii. No change
- 65. No change
- 66. No change
- 67. No change
- 68. No change
- 69. No change
- 70. No change
- 71. No change
- 72. No change
- 73. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change

- i. No change
 - ii. No change
 - iii. No change
 - iv. No change
- g. No change
- 74. No change
- 75. No change
- 76. No change
- 77. No change
- 78. No change
- 79. No change
- 80. No change
- 81. No change
- 82. No change
- 83. No change
- 84. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 85. “PM_{2.5}” means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated in accordance with 40 CFR 53.
- 86. No change
- 87. No change
- 88. No change
- 89. No change
- 90. No change
- 91. No change
- 92. No change
- 93. No change
- 94. No change
- 95. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 96. No change
- 97. No change
- 98. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- 99. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - b. No change
 - c. No change
- 100. No change
 - a. No change
 - b. No change

Notices of Proposed Rulemaking

- 101. No change
- 102. No change
- 103. No change
- 104. No change
- 105. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 106. No change
- 107. No change
- 108. No change
 - a. No change
 - b. No change
- 109. No change
- 110. No change
- 111. No change
- 112. No change
- 113. No change
- 114. No change
- 115. No change
- 116. No change
- 117. No change
- 118. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. No change
 - v. No change
 - w. No change
 - x. No change
 - y. No change
 - z. No change
 - aa. No change
 - bb. No change
 - cc. No change
 - dd. No change
 - ee. No change
 - ff. No change
 - gg. No change
 - hh. No change
 - ii. No change

- jj. No change
- kk. No change
- ll. No change
- mm. No change
- nn. No change
- oo. No change
- pp. No change
- qq. No change
- rr. No change
- ss. No change
- tt. No change
- uu. No change
- vv. No change
- ww. No change
- xx. No change
- 119. No change
- 120. No change
- 121. No change
- 122. No change
- 123. No change
- 124. No change
- 125. No change
- 126. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. No change
 - v. No change
 - w. No change
 - x. No change
 - y. No change
 - z. No change
 - aa. No change
 - bb. No change
 - cc. No change
 - dd. No change
 - ee. No change
 - ff. No change
 - gg. No change
 - hh. No change
 - ii. No change
 - jj. No change

- kk. No change
- ll. No change
- mm. No change
- nn. No change
- oo. No change
- pp. No change
- qq. No change
- rr. No change
- ss. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
- 127. No change

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

R18-2-201. Particulate matter: PM₁₀ and PM_{2.5}

A. Particulate Matter (PM₁₀)

- A**1. The primary ambient air quality standards for particulate matter (PM₁₀) are:
 - ± a. 50 micrograms per cubic meter of PM₁₀ – annual arithmetic mean concentration.
 - ± b. 150 micrograms per cubic meter of PM₁₀ – 24-hour average concentration.
- B**2. The secondary ambient air quality standards for particulate matter (PM₁₀) are:
 - ± a. 50 micrograms per cubic meter of PM₁₀ – annual arithmetic mean concentration.
 - ± b. 150 micrograms per cubic meter of PM₁₀ – 24-hour average concentration.
- 3. For the purposes of determining attainment of the primary and secondary standards, particulate matter (PM₁₀) shall be measured in the ambient air as PM₁₀ by:
 - a. A reference method based on 40 CFR 50, Appendix J, and designated in accordance with 40 CFR 53; or
 - b. An equivalent method designated in accordance with 40 CFR 53.
- 4. The primary and secondary annual ambient air quality standards for PM₁₀ shall be considered attained the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix K, is less than or equal to 50 micrograms per cubic meter.
- 5. The primary and secondary 24-hour ambient air quality standards for PM₁₀ shall be considered attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 CFR 50, Appendix K, is less than or equal to 1.

B. Particulate Matter (PM_{2.5})

- 1. The primary ambient air quality standards for particulate matter (PM_{2.5}) are:
 - a. 15 micrograms per cubic meter of PM_{2.5} – annual arithmetic mean concentration.
 - b. 65 micrograms per cubic meter of PM_{2.5} – 24-hour average concentration.
- 2. The secondary ambient air quality standards for particulate matter (PM_{2.5}) are:
 - a. 15 micrograms per cubic meter of PM_{2.5} – annual arithmetic mean concentration.
 - b. 65 micrograms per cubic meter of PM_{2.5} – 24-hour average concentration.
- 3. For purposes of determining attainment of the primary and secondary standards, particulate matter (PM_{2.5}) shall be measured in the ambient air by:
 - a. A reference method based on 40 CFR 50, Appendix L, and designated in accordance with 40 CFR 53; or
 - b. An equivalent method designated in accordance with 40 CFR 53.
- 4. The primary and secondary annual ambient air quality standards for PM_{2.5} are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 15 micrograms per cubic meter.
- 5. The primary and secondary 24-hour ambient air quality standards for PM_{2.5} are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 65 micrograms per cubic meter.

R18-2-202. Sulfur oxides (sulfur dioxide)

- A.** The primary ambient air quality standards for sulfur oxides, measured as sulfur dioxide, are:
 - 1. 80 micrograms per cubic meter (0.03 ppm) 0.03 parts per million (ppm) (80µg/m³) -- annual arithmetic mean.
 - 2. 365 micrograms per cubic meter (0.14 ppm) 0.14 parts per million (ppm) (365µg/m³) -- maximum 24-hour concentration not to be exceeded more than once per year.
- B.** The secondary ambient air quality standard for sulfur oxides, measured as sulfur dioxide, is 1300 micrograms per cubic meter (0.5 ppm) 0.5 parts per million (ppm) (1300 µg/m³) -- maximum three-hour concentration not to be exceeded more

than once per year.

R18-2-203. Ozone; 1-hour standard and 8-hour averaged standard

A. 1-hour standard. Until June 15, 2005:

- ~~A~~1. The 1-hour primary ambient air quality standard for ozone is 0.12 ppm (235 micrograms per cubic meter).
- ~~B~~2. The 1-hour secondary ambient air quality standard for ozone is 0.12 ppm (235 micrograms per cubic meter).
- ~~C~~3. The 1-hour standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 micrograms per cubic meter) is less than or equal to 1, as determined by 40 CFR 50, Appendix H.

B. 8-hour averaged standard.

1. The 8-hour averaged primary ambient air quality standard for ozone is 0.08 ppm.
2. The 8-hour averaged secondary ambient air quality standard for ozone is 0.08 ppm.
3. 8-hour averaged primary and secondary ambient air quality standards for ozone are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50 Appendix I.

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

40 CFR 81.303 as amended as of July 1, ~~2003~~ 2004 (and no future editions) is incorporated by reference and is on file with the Department of Environmental Quality and the Office of Secretary of State.

APPENDIX 2. TEST METHODS AND PROTOCOLS

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference revised as of July 1, ~~2003~~ 2004, and no future editions or amendments. These standards are on file with the Department, and are also available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328.

1. 40 CFR 50;
2. 40 CFR 50, Appendices A through ~~K~~ N;
3. 40 CFR Part 51, Appendix M, Appendix S, Section IV, and Appendix W;
4. 40 CFR 52, Appendices D and E;
5. ~~40 CFR 53;~~
- ~~56.~~ 40 CFR 58;
- ~~67.~~ 40 CFR 58, all appendices;
- ~~78.~~ 40 CFR Part 60, all appendices;
- ~~89.~~ 40 CFR Part 61, all appendices;
- ~~910.~~ 40 CFR Part 63, all appendices;
- ~~1011.~~ 40 CFR Part 75, all appendices.